REMARKS

This Application has been carefully reviewed in light of the Office Action mailed April 7, 2005. Claims 1-36 were pending in the Application. In the Office Action, Claims 23-34 were rejected, and Claims 1-22, 35 and 36 were withdrawn from consideration by the Examiner. In order to expedite prosecution of this Application, Applicants cancel without prejudice or disclaimer Claims 1-22, 35 and 36. Thus, Claims 23-34 remain pending in the Application. Applicants respectfully request reconsideration and favorable action in this case.

In the Office Action, the following actions were taken or matters were raised:

RESTRICTION/ELECTION

Applicants confirm the election of Claims 23-34 for examination in response to the Examiner's restriction and request for election. Claims 1-22, 35 and 36, treated by the examiner as having been withdrawn, have been canceled without prejudice or disclaimer. Applicants reserve the right to further prosecute Claims 1-22, 35 and 36 in divisional applications.

SECTION 103 REJECTIONS

Claims 23-28 and 32-34 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 2004/0105476 issued to Wasserbauer (hereinafter "*Wasserbauer*"). Claims 29-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Wasserbauer* as applied to claims 23-28 and further in view of U.S. Patent Publication No. 2002/0122615 issued to Painter et al. (hereinafter "*Painter*"). Applicants respectfully traverse these rejections.

The Examiner cites *Wasserbauer* as a reference presumably available under 35 U.S.C. § 102(e). Applicants respectfully submit that Claims 23-34 of the present Application are patentable over *Wasserbauer*, alone or in combination with *Painter* as proposed by the Examiner. However, Applicants have elected not to address the patentability of Claims 23-34 over *Wasserbauer* and instead submit that *Wasserbauer* does not qualify as prior art under Section 102(e) and, therefore, no prima facie rejection has

been made. By making this choice, Applicants do not admit the accuracy of the Examiner's remarks or reasoning or acquiesce in any way to the reasoning underlying the rejection.

Applicants conceived of the invention prior to August 19, 2002, the effective date of *Wasserbauer*. In support thereof, Applicants submit the accompanying Declaration under 37 C.F.R. § 1.131, the exhibit of which evidences the conception of the invention prior to the effective date of *Wasserbauer*. Further, the limitations or combinations of limitations for which the Examiner relied on in *Wasserbauer* to reject Claims 23-34 do not appear to be disclosed or suggested in the other cited reference (i.e., *Painter*). Therefore, Applicants respectfully submit that for at least this reason, Claims 23-34 are in condition for allowance.

The Examiner also rejected Claims 23-28 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,411,752 issued to Little et al. (hereinafter "*Little*"). Claims 29-31 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Little* as applied to claims 23-28 and further in view of U.S. Patent Publication No. 2002/0122615 issued to Painter et al. (hereinafter "*Painter*"). Applicants respectfully traverse these rejections.

Of the rejected claims, Claim 23 is independent. Applicants respectfully submit that *Little* does not disclose teach or suggest the limitations of independent Claim 23. For example, independent Claim 23 recites, at least in part, "a first optical waveguide formed in a first dielectric layer," "an optical interconnect formed in a second dielectric layer disposed above the first dielectric layer" and "a second optical waveguide formed in a third dielectric layer disposed above the second dielectric layer" where "the optical interconnect is operable to conduct optical signals from the first optical waveguide to the second optical waveguide" (emphasis added). In support of the Examiner's rejection of Claim 23, the Examiner appears to refer to a ring 102 and bus waveguides 104 and 106 of *Little* as depicted in at least figure 1 of *Little* as being equivalent to Applicants' invention (Office Action, pages 5 and 6). Applicants respectfully disagree. Little appears to disclose that the ring 102 and bus waveguides 104 and 106 of *Little* as depicted in figures 1a and 1b of *Little* is considered a

geometry called a "laterally coupled ring" (*Little*, column 1, lines 48-52)(emphasis added). *Little* also recites: "In addition, because the ring and the bus waveguides are in the same planar layer" (*Little*, column 1, lines 57-58)(emphasis added). Thus, *Little* does not appear to disclose or even suggest "a first optical waveguide formed in a first dielectric layer," "an optical interconnect formed in a second dielectric layer disposed above the first dielectric layer" and "a second optical waveguide formed in a third dielectric layer disposed above the second dielectric layer" as recited by independent Claim 23 (emphasis added). To the contrary, the ring 102 and bus waveguides 104 and 106 of *Little* relied on by the Examiner appear to be disposed in a single, planar layer. Accordingly, for at least this reason, Applicants respectfully submit that independent Claims 23, and Claims 24-28 that depend therefrom, are patentable over *Little*.

Claims 29-31 depend from independent Claim 23. For at least the reasons discussed above, Applicants respectfully submit that independent Claim 23 is in condition for allowance. Therefore, Claims 29-31 that depend therefrom are also in condition for allowance. Moreover, *Painter* does not appear to remedy the deficiencies of *Little*. Accordingly, Applicants respectfully request that the rejection of Claims 29-31 be withdrawn.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request reconsideration and full allowance of all pending claims.

No fee is believed due with this Response. If, however, Applicants have overlooked the need for any fee due with this Response, the Commissioner is hereby authorized to charge any fees or credit any overpayment associated with this Response to Deposit Account No. 13-4900 of Munsch Hardt Kopf & Harr, P.C..

Respectfully submitted,

By: James L Baudino
James L. Baudino
Reg. No. 43,486

Date: July 11, 2005

Correspondence to:
Munsch Hardt Kopf & Harr, P.C.
1445 Ross Avenue, Suite 4000
Dallas, TX 75202
Tel. (214) 855-7571
Customer No. 23559

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